

Appendix 2

Proposed Response to the Government Consultation Paper – “Orders and Regulations relating to the Conduct of Local Authority Members in England “

The consultation documents sets out a series of questions that the Government wishes local authorities to respond to. Responses are sought by the 15th February 2007.

Question 1

“Does our proposal to prohibit a member who has been involved in a decision on the initial assessment of an allegation from reviewing any subsequent request to review that decision to take no action (but for such a member not to be prohibited necessarily from taking part in any subsequent determination hearing), provide on appropriate balance between the need to avoid conflicts of interest and ensure a proportionate approach? Would a requirement to perform the functions of initial assessment, review of a decision to take no action, and subsequent hearing, by sub-committees be workable?”

It is clearly the case that natural justice dictates that if a member has been involved in a decision on the initial assessment of an allegation he should not take part in any review on that decision. However, it is considered that similar considerations would not apply if such member were then to take part in a determination decision. It is therefore considered that the proposed stance on this issue is sound. Clearly the Council will have to amend its rules to allow for a determination of questions relating to initial assessment, reviews and final hearing to be determined by sub-committee. It is considered that such arrangements will be workable.

Question 2

“When an allegation is made to more than one standards committee, is it appropriate for decisions on which standards committee should deal with it to be a matter for agreement between standards committees? Do you agree that it is neither necessary nor desirable to provide for any adjudication role for the Standards Board?”

Generally speaking it is sensible to allow councils to sort out such issues amongst themselves. (*The most common situation will be where a member is both a member of a county council and district council and the allegation against him has potential relevance to both roles*). However, it is considered that there should be a fall back position if both councils are unable to agree

the way forward. In these very limited circumstances it is considered that an adjudication role for the Standards Board would actually be desirable.

Question 3

“Are you content with our proposals that the timescale for making initial decisions should be a matter for guidance by the Standards Board, rather than for the imposition of a statutory time limit?”

The proposals are acceptable. The only issue here is that the council should have clear, unequivocal instructions on which to act – whether that is enshrined by statutory rules or merely by a guidance note is not considered to be of any real significance

Question 4

“Do you agree that the sort of circumstance we have identified would justify a standards committee being relieved of the obligation to provide a summary of the allegations at the time of initial assessment is made? Are there any other circumstances which you think would also justify the withholding of information? Do you agree that in a case where the summary has been withheld the obligation to provide it should arise at the point where the monitoring officer or ethical standards officer is of the view that a sufficient investigation has been undertaken?”

Clearly there are some difficult issues to grapple with here.

A standards committee will be required to take reasonable steps to give a written summary of an allegation it receives to the person who is the subject of it. As a general principle this much be right; natural justice dictate that it is so.

It is proposed that in certain circumstances it may not be appropriate for a standards committee to provide information to the subject of an allegation – in particular where the standards committees form the reasonable view that it would be in the public interest not to provide the written summary, it would have the discretion to defer going so.

Guidance from the Standards Board would give advice on the circumstances in which a standards committee would be entitled to operate its discretion to defer giving the written summary of the allegation. This guidance might involve talking such action in the following circumstances.

- Where the disclosure of the complainant’s personal details or details of the allegation to the person who is the subject of the allegation, before the investigating officers has had the opportunity to interview the complainant, may result in evidence being compromised or destroyed by the subject of the allegation.

- Where there is the real possibility of intimidation of the complainant or witness by the subject of the allegation

As has already been stated this is a very difficult area. The general rule has to be that members should know of any allegations against them at the earliest opportunity (normally when an initial assessment of the allegation is made.) However, there may be highly exceptional circumstances where this will not be appropriate. It is agreed that in the circumstances outlined in the consultation document a summary of the allegation should not be provided at the time the initial assessment is made. It is difficult to think of any other circumstances where the departure from the normal rules should be permitted – the presumption should be that information of any allegations should be disclosed at an early stage unless there are compelling reasons for not so doing. Concerns centred on loss of evidence or intimidation of witness would constitute, it is considered, such compelling reasons. However, it is difficult to think of any other reasons for a departure from the norm.

It is agreed that when a summary has initially been withheld it should be provided to a member at the time where the monitoring officer is of the view that a sufficient investigation has been undertaken.

Question 5

“Do you agree that circumstances should be prescribed, as we have proposed, in which the monitoring officers will refer a case back to the standards committee?”

Yes.

Question 6

“Are you in favour of an increase in the maximum sanction the standards committee can impose? If so are you confident that the maximum sanction should increase from three months to six months suspension or partial suspension from office?”

In the new regime standards committees may have more serious cases to consider. In these circumstances it is clearly appropriate to increase the maximum sanction that it can impose. The suggested changes are acceptable.

Question 7

” Do you have any views on the practicability of requiring that the chairs of all sub-committees discharging the assessment, reviews and hearing functions should be independent, which is likely to mean that there would need to be at least three independent chairs for each standards committees? Would it be consistent with robust decisions making if one or more of the sub-committees chairs were not independent?”

It is clearly highly desirable for independent members to play a major role in standards committees. It is likely that this will increase public confidence in the system. However, it must be pointed out that it is not always easy to find and retain independent members who are willing and able to devote their free time to such matters. Closer liaison with adjoining local authorities may help in this regard. Whilst the Council agrees with the theory behind the proposals nevertheless we do have major doubts about the practicability of the suggestion of all chairs of sub-committees being independent.

Question 8

“Do you agree with our proposal that this initial assessment of misconduct allegations and any reviews of a standards committee’s decisions to take no action should be exempt from the rules on access to information?”

This must be correct. At the initial stage standards sub-committee may be considering unfounded and scurrilous allegations. Such allegations should not be published – no publicity should be given to unfounded allegations.

Question 9

“Have we identified appropriate criteria for the Standards Board to consider when making decisions to suspend a standards committee’s powers to make initial assessments? Are there any other relevant criteria which the Board ought to take into account?”

The proposals are acceptable. If a council does not perform in relation to standards issues then it is right and proper that the Standards Board should have the ability to suspend a standard committee’s powers. However, this should only happen as a last resort.

Question 10

“Would the imposition of a charging regime, to allow the Standards Board and local authorities to recover the costs incurred by them, be effective in principle in supporting the operation of the new locally-based ethical regime? If so, should the level of fees be left to the Board or authorities to set; or should it be prescribed by the Secretary of State or set at a level that does no more than recover costs?”

This is concerned with the situation of where the initial assessment function of one authority has been suspended; in those circumstances that function may be undertaken by the standards committee of another authority. The government proposes to allow for such arrangements to be made where the Standards Board and the receiving standards committee agree that it would be appropriate. The government is considering allowing for the Standards Board or standards committees to charge those standards committees which have had their initial assessment functions suspended for undertaking those functions on their behalf. In these limited circumstances it is considered that the imposition of a charging regime would be appropriate. If such a regime is introduced then it is considered reasonable that the level of fees should be left for the Board or local authorities to set; however, such charges should be set at a level that does no more than recover reasonable costs?

Question 11

“Would you be interested in pursuing joint working arrangements with other authorities?”

The council is always keen on joint working initiatives. In a number of other areas the council has working effectively with some of its neighbouring authorities. Joint working on standards issues clearly has a number of positive points associated with it – the pooling of resources and shared expertise not the least. However, any definite decision on this issue can only be made once the detailed Regulations have been published and detailed discussions have taken place with nearby councils. It is only then that we will be in a position to decide finally if the suggestion of joint working on standards issues makes sense for this council and if so just how extensive that joint working should be. Nevertheless at this stage the Council agrees that joint working arrangements of some description would be a worthwhile idea to explore. The council does not consider that there is any need to limit the geographical area covered by a particular joint agreement - such questions should be for the relevant local authorities to decide on. The council agrees with the proposal relating to parish council representative on joint committees.

Question 12

“Are you content that the range of sanctions available to case tribunals of the Adjudications Panel should be expanded, so the sanctions they can impose reflect those already available to standards committees?”

- Yes. The range of sanctions suggested should be sufficient to enable the Adjudication Panel to fulfil its functions effectively.

Question 13

“Do you agree with our proposals for an ethical standards officer to be able to withdraw referrals to the Adjudications Panel in the circumstances described? Are there any other situations in which it might be appropriate for an ethical standards officer to withdraw a reference or an interim reference?”

Yes. The arrangements that are proposed would appear to be sensible and well thought out.

Question 14

“Are you content with our proposal to provide that dispensations may be granted in respect of a committee or the full council if the effect otherwise would be that a political party either lost a majority which it had previously held, or gained a majority it did not previously hold”

It is understood that the proposed amendments here are intended to ‘tidy up’ the existing rules. Members’ views are sought on this issue. Do members agree that it is appropriate that dispensations should be granted in respect of decisions to be made either by full council or committee if the effect otherwise would be that a political party would lose a majority or another party would gain one?

Question 15

This is not relevant to this Council.

Question 16

“Do you agree with our proposal to implement the reformed conduct regime on 1 April 2008 at the earliest?”

It is considered that the time scales are very tight. It is only when local authorities have seen the detailed regulations that they can prepare properly for the introduction of the local referral regime. These changes are major and

require careful consideration. This council will need to change their constitution to increase the size of the standards committee and to set up standards sub-committees. Further both members and officers will require extensive training. It is considered that a delay of at least a month or two would enable greater preparation for the new regime. However, if the deadline of 1 April 2008 remains in place then this Council will do everything possible to ensure as smooth a transition as is possible.